(3)

No. 85-693

In the Supreme Court

OF THE

United States

OCTOBER TERM, 1985

ASAHI METAL INDUSTRY CO., LTD.
Petitioner,

v.

SUPERIOR COURT OF CALIFORNIA
IN AND FOR THE COUNTY OF SOLANO
(CHENG SHIN RUBBER INDUSTRIAL CO., LTD.,
REAL PARTY IN INTEREST)
Respondent.

On Petition for Writ of Certiorari to the Court of Appeals for the Ninth Circuit

REPLY BRIEF OF PETITIONER IN SUPPORT OF PETITION

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MINIMUM CONTACTS AND PURPOSEFUL ACTION

Cheng Shin embraces a very liberal interpretation of this Court's expression "purposefully avails".[1]

Cheng Shin then reviews a mass of statistics gathered for this case, not the least knowledge of which is charged to Asahi. And from these statistics Cheng Shin reasons that the likelihood of Asahi valves' reaching California is so high that Asahi's sales to Cheng Shin must be regarded as that purposeful action which

[1] "Purposefully avails itself of the privilege of conducting activities in the forum state". *Hanson v. Denckla*, 357 U.S. 235, 253 (1958).

should lead Asahi to anticipate being haled into court in California.

The measure of minimum contacts applied by the court below agrees with this Court's standards only if: (1) Cheng Shin's liberal interpretation of "purposefully avails" is correct, and (2) it is then permissible to judge purposefulness by facts collected after the event and unknown at the time to the party whose purpose is to be judged.

All the statistics gathered by Cheng Shin, accepted and used by the California Supreme Court and reiterated by Cheng Shin here (Response to Petition, pp. 5-7) to show that Petitioner could reasonably anticipate being haled into a California Court in this action are shown clearly to have been gathered for the purpose of this action. None of them were gathered for the purpose of any transaction in tire valves. What these figures would show, however, even if they were chargeable to Petitioner, is no more than the likelihood that Asahi valves would find their way into California. This is "the mere likelihood" which is not adequate to found jurisdiction. *Worldwide Volkswagen*, 444 U.S. 286, 297 (1980).

But the figures are irrelevant because they are not part of Petitioner's knowledge, intent and purpose and cannot represent the state of its mind with respect to availing itself of the benefits and protections of California's laws. What the record shows here as to Petitioner's mind is no more than the vague statement that an affiant is informed (from an unspecified source) and believes that Asahi was aware that (unspecified) Asahi valve stem assemblies would end up in California. (Petition, Appendix C-10, n.4.) This scanty knowledge, expressed with suspicious hesitance and vagueness, certainly raises the matter no higher than the mere likelihood which is inadequate.

APPLICATION OF CALIFORNIA LAW

Cheng Shin evidently recognizes that the intention of the California Supreme Court to apply California law is indefensible. It therefore asserts that the Court did not mean to apply California law but only that California should provide a convenient forum for whatever law applies. The language will not admit of

that evasion. And even if Cheng Shin could bind itself, it could not bind the California courts not to do as their Supreme Court has said in finding state interest and applying California standards to foreign transactions.

Cheng Shin's argument for a convenient forum, moreover, is based upon the hypothesis of suits by injured Californians and not upon the claim actually made here by one alien against another alien over an alien transaction.

THE CONFLICTS

It is true, of course, that not all courts, agreeing upon due process standards, will reach the same results when evaluating the same circumstances under those standards. But the conflicts here are not, as Cheng Shin suggests, the result of that phenomenon. This case presents a flat conflict between a court which says that supplying a component part with awareness that the finished product may reach the United States is enough to found personal jurisdiction over the component maker and courts which say that it is not enough. It is not a matter of permissibly different evaluations but a flat contradiction as to the threshhold of constitutional jurisdiction.

With respect to contacts with the forum, the decision in this case directly conflicts with *Humble v. Toyota Motor Co.*, 727 F.2d 709 (8th Cir. 1984), *aff'g*, 578 F. Supp. 530 (N.D. Ia. 1982), and *DeJames v. Magnificence Carriers, Inc.*, 654 F.2d 280 (3d Cir.), *cert. denied*, 454 U.S. 1085 (1981). The number of additional cases in confrontation depends upon whether one broadens the class to embrace certain cases of finished products[2] or restricts it to component parts.

With respect to the premature choice of law, the case directly conflicts with *Iowa Electric Light & Power Co. v. Atlas Corp.*, 603 F.2d 1301 (8th Cir. 1979), *cert. denied*, 445 U.S. 911 (1980); *Galgay v. Bulletin Co.*, 504 F.2d 1062 (2d Cir. 1974) and

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[2] *Cf, e.g.*, Hutson v. Fehr Bros., 584 F.2d 833 (8th Cir.), *cert. denied*, 439 U.S. 983 (1978) *with* Oswalt v. Scripto, Inc., 616 F.2d 191 (5th Cir. 1980).

Southern Machine Co. v. Mohasco Industries, Inc., 401 F.2d 374 (6th Cir. 1968), as well as this Court's decisions in *Hanson v. Denckla*, 357 U.S. 235 (1958); *Shaffer v. Heitner*, 433 U.S. 186 (1977) and *Kulko v. California Superior Court*, 436 U.S. 84 (1978).

Respectfully Submitted

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